

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

\_\_\_\_\_  
In the Matter of )  
 )  
 )

Petition for Declaratory Ruling of )  
Continental Airlines, Inc. )  
\_\_\_\_\_ )

ET Docket No. 05-247

To: The Office of Engineering and Technology

**COMMENTS OF  
MANCHESTER AIRPORT**

**I. INTRODUCTION**

The Manchester Airport ("AIRPORT") is the Department of Aviation of the City of Manchester, NH. AIRPORT serves over four million passengers and ships more than 81,000 tons of cargo and mail on an annual basis. Over ten airlines operate out of AIRPORT, and AIRPORT is home to a large number of commercial tenants including FEDEX, UPS, DHL, Wiggins Airways, Meggitt Avionics, Summit Packaging, and Freudenberg NOK. The Office of Engineering and Technology ("OET") has requested comments regarding a Petition for Declaratory Ruling (the "Petition") filed by Continental Airlines, Inc. ("Continental") in which Continental complains that the Massachusetts Port Authority ("Massport") has sought to prevent Continental from operating a "Wi-Fi" antenna in Continental's frequent flyer club lounge at

Logan Airport. We file today in support of the comments filed by Massport and Airports Council International – North America (“ACI-NA”).

For all the reasons cited by ACI-NA, we urge the FCC to rule in a way that recognizes the special circumstances arising in the airport setting. Uniquely complex environments, airports are highly dependent on local management for centralized coordination and oversight in balancing the needs of large numbers of tenants and ensuring the safety and security of the traveling public. As ACI-NA states in its comments, over decades of experience AIRPORT and other airport proprietors have learned that retaining control over their physical infrastructure is a critical management tool. We may not choose to exercise that control in every instance, but retaining the authority to do so is essential. This applies to communications infrastructure as much as to any other type of facility.

In addition, AIRPORT exists primarily to serve the traveling public. We are driven by their needs, and one of the needs we have recently identified is the ability for passengers to have access to wireless Internet service throughout our terminal facilities. To that end, we have implemented a Wi-Fi service. Any action by OET that would hinder the effective provision of that service would hinder our ability to serve the public.

Finally, we note that there are significant legal and practical questions concerning the application of the Over-the-Air Reception Devices (“OTARD”) Rule in the airport context. Even if OET takes a different view of those questions, OET should either allow Massport to proceed under the “central antenna exception,” or under a waiver.

**II. ANY ACTION BY OET SHOULD NOT RESTRICT AIRPORT’S ABILITY TO PROVIDE WI-FI SERVICE.**



AIRPORT offers Wi-Fi service to the public under a model that was carefully considered and developed, after considering local conditions. AIRPORT Wi-Fi was installed in June of 2004 under the auspices of a third-party provider. All infrastructure costs and ongoing maintenance were paid by AIRPORT. Service is available throughout the airport campus. The public pays \$6.95 per 24-hour usage. A third-party contractor operates the system. There are three plus service providers with available choices growing. Tenants are discouraged from using own antennas. The airport uses Wi-Fi for operational uses, such as airfield and snow removal operations, and the airlines are considering using it. AIRPORT urges OET to bear in mind that AIRPORT and many other airports have introduced Wi-Fi service under many different business models, each adapted to local conditions. We have tried very hard to address the needs of all the stakeholders at the airport, to develop an approach that works for all parties. However OET decides this case should not hinder the ability of airports to make different policy choices as they attempt to perform their missions.

### **III. AIRPORT BELIEVES THE OTARD RULE DOES NOT PROTECT CONTINENTAL IN THIS CASE.**

In its comments, ACI-NA raises a number of arguments, including (i) that application of the OTARD Rule in Massport's case might implicate the takings clause of the Fifth Amendment; (ii) that only Continental, and not Continental's paying customers, are protected by the Rule; and (iii) that the Rule does not give Continental the right to transmit a signal outside its leased space. ACI-NA also notes that Continental has not proven its claim of business use of its Wi-Fi antenna

and that any such use is incidental to the use by passengers. AIRPORT supports all of these arguments, and urges OET not to apply the OTARD Rule in the airport context at all.

**IV. OET MUST NOT INTERFERE WITH THE ABILITY OF AIRPORTS TO PROTECT THE SAFETY AND SECURITY OF PASSENGERS.**

AIRPORT is very concerned that OET may restrict the ability of AIRPORT and other airports to protect the safety and security of passengers. Massport has argued that its actions were protected under the safety exception to the OTARD Rule. Airports must have broad latitude in the safety area – it is simply impractical to expect that OET and the FCC can address airport safety issues on a case-by-case basis in a timely and effective fashion. Consequently, airports should be given wide latitude to apply the safety exception to the OTARD Rule. Continental and the other airlines, as well as other airport tenants, are extremely sophisticated and knowledgeable organizations; they do not need to be protected from their landlords in the way that the OTARD Rule suggests is appropriate for individual homeowners or apartment residents.

In addition, as ACI-NA points out, it is not enough for OET to simply say that unlicensed Wi-Fi frequencies should not be used for mission-critical applications. Not only are they being used for such purposes, but such use is likely to grow. Rather than fight a rear-guard action against this development, OET should encourage it, because in the end it is in the public interest.

**V. IF OET CONCLUDES THE RULE DOES APPLY, AIRPORT URGES OET EITHER TO APPLY THE CENTRAL ANTENNA EXCEPTION TO THE CASE OF MASSPORT, OR TO GRANT MASSPORT A WAIVER.**



If OET concludes that the Rule does apply, notwithstanding the arguments of ACI-NA to the contrary, AIRPORT notes that there is ample evidence to justify either the application of the central antenna exception of the Rule, or the grant of a waiver under 47 C.F.R. 1.4000(d).

Although the central antenna exception was crafted for use in the multi-family residential video context, we believe that it can and should be adapted to the airport context. Airports are not condominiums or townhouse developments. They are much more complicated environments, both in terms of their economic complexity and in terms of the many types of communications activities that take place on their premises. Chaos is not a practical solution, and a central antenna option can solve many problems for both airport managers and tenants. While some tenants may prefer to have their own antennas, in some cases – depending on local conditions -- this may be an unreasonable desire in the close quarters of an airport. As discussed in the ACI-CNA comments, allowing individual users free rein can make it impossible for others – including the airport – to operate effectively. In that case, the airport must be allowed to manage the facility for the benefit of all.

Airports have every incentive to deliver good quality service to every person in their terminals – in fact, this was in part what motivated Massport's actions. Consequently, Massport and other airports can be expected to ensure that the quality of signal reception over a central system will be adequate for all users. Similarly, it seems unlikely that in Continental's case there would be any unreasonable increase in cost or any unreasonable delay in obtaining access to Wi-Fi service. Thus, Massport should be allowed to operate under the central antenna option.

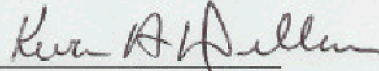
Finally, we believe that Massport's concerns are "highly specialized and unusual," and thus warrant a waiver under 47 C.F.R. § 1.4000(d). Airports are by definition highly specialized

and unusual environments, and Logan has particular concerns. If the central antenna option does not apply, we urge OET to grant Massport a waiver.

## CONCLUSION

AIRPORT supports the comments of ACI-NA and Massport, and urges OET to deny the Petition.

Respectfully submitted,



Kevin A. Dillon, AAE

Airport Director

One Airport Rd, Suite 300

Manchester, NH 03103-3395

603-624-6539

September 30, 2005



Certificate of Service

I hereby certify that I have caused to be mailed this 30th day of September, 2005, copies of the foregoing Comments of the AIRPORT, by first-class mail, postage prepaid, to the following persons:

Holden E. Shannon  
Senior Vice President  
Global Real Estate & Security  
Continental Airlines, Inc.  
1600 Smith Street – HQSVP  
Houston, TX 77002

Robert Edwards  
Staff Vice President  
System Operations  
Continental Airlines, Inc.  
1600 Smith Street – HQSTK  
Houston, TX 77002

Donna J. Katos  
Managing Attorney – Litigation  
Thomas Newton Bolling  
Senior Attorney – Regulatory  
Continental Airlines, Inc.  
1600 Smith Street – HQSLG  
Houston, TX 77002

Henry M. Rivera  
Vinson & Elkins, LLP  
The Willard Office Building  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1008  
*Counsel for Continental Airlines, Inc.*

Christine M. Gill  
McDermott Will & Emery  
Suite 1200  
600 13th Street, NW  
Washington DC 20005-8087  
*Counsel for Massachusetts Port Authority*

Office of the Secretary\*  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20054  
Attn: Office of Engineering and  
Technology, Policy and Rules Division

\*Service by ECFS

  
\_\_\_\_\_

Manchester, NH